Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Attribution of broadcast and Cable/MDS Interests	)	MM Docket No. 94-150
	)	
Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry	)	MM Docket No. 92-51
	)	
Reexamination of the Commission's Cross-Interest Policy	)	MM Docket No. 87-154

REPLY COMMENTS OF GTE

GTE Service Corporation, on behalf of its affiliated domestic telephone operating and video companies ("GTE"), respectively submits these reply comments in response to the Commission's Further Notice of Proposed Rulemaking ("FNPRM") in MM Docket No. 94-150, MM Docket No. 92-51, and MM Docket No. 87-154, FCC 96-436, released November 7, 1996.

I. Introduction

The Commission has issued this FNPRM against the backdrop of the relaxation of its ownership rules resulting from the passage of the Telecommunications Act of

1996 ("1996 Act").[1] The Commission seeks comment on many issues, including whether it should amend the cable/Multipoint Distribution Service ("MDS"[2]) cross-ownership rule. In these Reply Comments, GTE maintains the proposed modification of the cross-ownership rule will not increase diversity in the delivery of video services and will not prevent dominant[3] wireline cable operators from warehousing the frequencies or obtaining an unfair advantage over their competitors. As part of most local cable television franchise agreements, a cable operator is required to build wireline cable facilities to provide video services to the franchise area. The cross-ownership modification proposal does little to further competition or the diversity of delivery of video service and could easily work in a counterproductive way to reduce competition.

II. The Commission should not change its cable/MDS Cross-Ownership Attribution Rule.

The FNPRM (at 43) observes that Section 613(a) of the Act states that "[i]t shall be unlawful for a cable operator to hold a license for multichannel multipoint distribution service... in any portion of the franchise area served by that cable operator's cable system." 47 U.S.C. § 533(a). Section 613(a) was added by Section 11(a) of the 1992 Cable Act. In implementing Section 613(a), the Commission modified its existing

---

1 Pub. L. No. 104-104, 110 Stat. 56 (1996).

2 MDS is intended to mean all frequencies associated with MDS, Multichannel Multipoint Distribution Services ("MMDS"), Operational Fixed Microwave Service ("OFS"), and Instructional Television Fixed Service ("ITFS").

3 GTE defines dominant as any entity controlling 50% of the multi-channel market (Wireline Cable, MDS, and Direct Broadcast Satellite ("DBS")).

cable/MDA cross-ownership rule in Section 21.912 of the rules.[4] Section 21.912(a) prevents a cable operator from obtaining an MDS authorization if *any portion* of the MDS protected service area overlaps with the cable system's franchise area actually being served by cable. Section 21.912(b) also prohibits a cable operator from leasing MDS capacity if its franchise area being served overlaps with the MDS protected service area. For purposes of this rule, an attributable ownership interest is defined by reference to the definitions contained in the Notes to § 76.501. The provisions of Note 2(a) to § 76.501 regarding five percent interests include all voting or nonvoting stock or limited partnership equity interests of five percent or more. The FNPRM (at 44) suggests this strict attribution standard severely restricts investment opportunities that are compatible with the Commission's goal of strengthening wireless cable and providing meaningful competition to cable operators. The FNPRM invites comment on whether the Commission should apply broadcast attribution criteria, as modified by this proceeding, in determining cognizable interests in MDS licensees and cable systems for purposes of applying the ownership restrictions of Section 21.912 of its Rules.

GTE believes a dominant wireline cable operator would have an unfair competitive advantage if the cross-ownership rule is modified. This is because a dominant wireline cable operator could use its existing headend facilities for MDS transmission, resulting in possible cross-subsidization of wireline cable and the MDS wireless offering that could increase the costs underlying the franchise area's regulated

---

[4] *Implementation of Section 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992*, 8 FCC Rcd 6828, 6843 (1993) ("*Implementation Order*"), *reconsidered on other grounds*, 10 FCC Rcd 4654 (1995).

cable television rates.

The Commission recently approved Basic Trading Area ("BTA") rights for MDS licenses that will, in some instances, represent an area that is larger in size than a dominant wireline cable operator's franchised area. Economic opportunity for a non-affiliated MDS operator would be limited if the dominant wireline cable operator had an economic interest in some of the MDS channels within the BTA. Simply put, an unaffiliated MDS operator would find it more difficult to compete. Moreover, the dominant wireline cable operator could use the economic incentive of the larger BTA area to subsidize its wireline cable operation and insulate itself from competitive pressures. With possible access to programming services it owns, the dominant wireline cable operator could "triple dip" by gaining economic benefit from its programming ownership, its wireline cable delivery operation, and the wireless MDS delivery operation within a BTA market area.

GTE believes the Commission can best meet its goal of strengthening wireless cable and providing meaningful competition to entrenched cable operators if it restricts a dominant wireline cable operator from involvement in MDS within its franchised serving area, but allows that operator to operate and/or sell MDS service outside their franchised serving area. This would enable a dominant wireline cable operator to market an MDS service offering into nearby non-franchised areas and, in many cases, might allow that operator to transmit and deliver the MDS service while preventing the warehousing of MDS frequencies within the operator's franchised serving area. GTE suggests that the dominant wireline cable operator should not be allowed to own or lease MDS frequency if there is a significant overlap (such as 10%) with the relevant franchised area.

The Commission has recently decided to restrict the eligibility of incumbent local exchange carriers ("LECs") and in-region wireline cable operators from bidding on the 1,150 MHZ block of Local Multipoint Distribution Service ("LMDS") spectrum in their authorized or franchised serving areas.[5] In that proceeding, the Commission concluded that there are substantial economic incentives for LECs and in-region cable operators to seek LMDS licenses within their service areas. A limited, short-term eligibility restriction has been imposed and is deemed by the Commission to be pro-competitive and in the public interest. LECs and in-region cable operators are, however, allowed to bid for licenses outside their service areas, and the Commission has provided for waivers where it can be demonstrated that the local market for these services is competitive. These eligibility rules constitute, in the Commission's opinion, the least restrictive means available to accomplish its pro-competitive purposes. GTE believes that the Commission, for the same reasons, should not make any changes to the cable/MDS cross-ownership attribution rule at this time.

---

[5] *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5 - 29.5 GHz Frequency Band, to Establish Rules and Policies for Local Distribution Service and for Fixed Satellite Services*, CC Docket No. 92-297, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking*, FCC 97-82, released March 11, 1997.

III. Conclusion

For all the forgoing reasons, the Commission should not make any changes to the cable/MDS cross-ownership attribution rules.

Respectfully submitted,

GTE Service Corporation, on behalf of its affiliated domestic telephone operating and video companies

John F. Raposa, HQE03J27
GTE Service Corporation
P.O. Box 152092
Irving, TX 75015-2092
(972) 718-6969

By Andre J. Lachance
Andre J. Lachance
1850 M Street, N.W.
Suite 1200
Washington, DC 20036
(202) 463-5276

March 21, 1997

Their Attorneys

Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Reply Comments of GTE" have been mailed by first class United States mail, postage prepaid, on March 21, 1997 to the following parties:

Roy Russo
Cohn & Marks
1333 New Hampshire Avenue, NW
Washington, DC 20036

Bernard E. Waterman, President
Waterman Broadcasting Corporation of Florida
3719 Central Avenue-PO Box 7578
Fort Myers, FL 33911

James L. Winston
Rubin Winston Diercks Harris & Cooke
1333 New Hampshire Avenue, NW
Suite 1000
Washington, DC 20036

John E. Welch
O'Melveny & Myers
555 13th Street, NW
Washington, DC 20004

Henry L. Baumann
National Association of Broadcasters
1771 N Street, NW
Washington, DC 20036

Howard F. Jaeckel
CBS, Inc.
51 West 52 Street
New York, NY 10019

Beverly Bahaket
Bahaket Communications
1 Television Place
Charlotte, NC 28232

Ian D. Volner
Venable Baetjer Howard Civiletti
1201 New York Avenue, NW
Suite 1000
Washington, DC 20005

Angela J. Campbell
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue, NW, Room 312
Washington, DC 20001

Joseph S. Paykel
Media Access Project
1707 L Street, NW
Suite 400
Washington, DC 20036

Jeffrey L. Ross
Patton Boggs
2550 M Street, NW
Washington, DC 20037

Ann D. Berkowitz